

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARTHROCARE CORPORATION,

Plaintiff,

v.

GYRUS MEDICAL, INC., GYRUS ENT,
L.L.C., and GYRUS ACMI, INC.,

Defendants.

C.A. No. 07-729-SLR

**REDACTED -
PUBLIC VERSION**

DECLARATION OF JARED BOBROW

OF COUNSEL:

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Attorneys for Plaintiff ArthroCare Corporation

Original Filing Date: February 19, 2008

Redacted Filing Date: February 25, 2008

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FOR THE DISTRICT OF DELAWARE**

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L.L.C., and GYRUS ACMI, INC.,

Defendants.

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**REDACTED –
PUBLIC VERSION**

DECLARATION OF JARED BOBROW

Jared Bobrow declares:

1. I am a partner with Weil, Gotshal & Manges LLP (“Weil Gotshal”) and serve as the co-head of the firm’s patent litigation practice.
2. Weil Gotshal is an international law firm of approximately 1,200 attorneys practicing worldwide. The firm is headquartered in New York and has 19 offices throughout the United States, Europe and Asia. This case is staffed with patent litigators in Weil Gotshal’s Silicon Valley and Austin offices.¹
3. Weil Gotshal has represented ArthroCare Corporation in connection with United States Patent No. 5,697,882 (the “882 Patent”) since 1997. I have been one of

¹ While I was preparing for and attending a bench trial before this Court in early November 2007, a partner from the firm’s New York office (Nicholas Groombridge) was involved in the case.

the lawyers representing ArthroCare on various matters related to the '882 Patent (and patents related to it) since that time.

4. Over the course of the ArthroCare representation, Weil Gotshal attorneys have become familiar with the '882 Patent and its file history, the patented technology and its applications, and the types of businesses that manufacture and distribute products utilizing the invention. Weil Gotshal attorneys have investigated potentially infringing uses of the technology covered by the '882 Patent and have brought four lawsuits seeking to enforce the '882 Patent, including one prior lawsuit in this Court. *ArthroCare Corp. v. Smith & Nephew, Inc.*, 310 F. Supp. 2d 368 (D. Del. 2004), *aff'd in part, rev'd in part, and vacated in part*, 406 F.3d 1865 (Fed. Cir. 2005). In the *Smith & Nephew* case, I, along with other Weil Gotshal attorneys, tried patent infringement claims from three ArthroCare patents, including the '882 Patent, and then handled the appeal to the United States Court of Appeals for the Federal Circuit. Over the years, I have spent many hundreds of hours working on lawsuits involving the '882 Patent.

5. ArthroCare asked Weil Gotshal to represent it in this matter adverse to Gyrus in late 2005 or early 2006. I formally opened a new matter in our system in early 2006. Weil Gotshal maintains a conflicts database containing information about each matter the firm handles. Gyrus Group was listed in the conflicts database as an adverse party on the ArthroCare matter.

6. The attorneys working on this litigation were unaware of Weil Gotshal's representation of Olympus Corporation with respect to its proposed acquisition of Gyrus Group PLC until after we filed this lawsuit on November 14, 2007.

7. On November 24, 2007, shortly after the Olympus matter was called to my

attention, I circulated a memorandum to all Weil Gotshal personnel stating the terms of mandatory screening procedures imposed to ensure separation of the ArthroCare and Olympus teams. A true and accurate copy of that memorandum, and its cover email, is attached as Exhibit A.

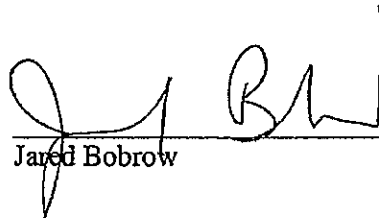
8. No lawyers on the ArthroCare team working on this case have worked on the Olympus representation and no lawyers on the Olympus team have worked on the ArthroCare matter. I am not aware of any instance where lawyers on the ArthroCare and Olympus teams have discussed the two representations, except with respect to the allegations by defendants of a conflict of interest and the steps Weil Gotshal has taken to screen personnel on the ArthroCare matter from information and documents relating to the Olympus matter, and vice versa. No lawyer on the ArthroCare team has received or had access to any documents or due diligence information relating to the Olympus representation. And to my knowledge no member of the Olympus team has received or had access to any documents or information relating to the ArthroCare representation.

9. I have assessed Weil Gotshal's ability to represent ArthroCare in this lawsuit and I do not believe there are any material limitations on the firm's ability to do so diligently and competently. The patent litigation team has no need for any access to information that may have been provided to Weil Gotshal in connection with its representation of Olympus in the acquisition and the screen between members of the ArthroCare and Olympus teams does not impair our ability to litigate the patent case effectively.

10. ArthroCare has consented to Weil Gotshal's continued representation of the company in this lawsuit and its concurrent representation of Olympus with respect to

its acquisition of Gyrus Group. A true and accurate copy of a letter confirming ArthroCare's consent is attached as Exhibit B.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 18, 2008, in San Jose, California.



Jared Bobrow

CERTIFICATE OF SERVICE

I, James W. Parrett, Jr., hereby certify that copies of the foregoing were caused to be served on February 25, 2008 upon the following in the manner indicated:

**VIA ELECTRONIC MAIL
and HAND DELIVERY**

Richard L. Horwitz
David E. Moore
POTTER ANDERSON & CORROON LLP
1313 North Market Street
Hercules Plaza – 6th Floor
Wilmington, DE 19801

VIA ELECTRONIC MAIL

Darle M. Short
Thomas J. Pardini
Daniel A. Tanner, III
Daniel M. Schneider
Oloff & Berridge, PLC
277 S. Washington Street, Ste. 500
Alexandria, VA 22314

/s/ James W. Parrett, Jr.

James W. Parrett, Jr. (#4292)

EXHIBIT A

----- Forwarded by Jared Bobrow/SV/WGM/US on 02/17/2008 08:40 AM -----

Jared
Bobrow/SV/WGM/US To US All@WGM, EU All@WGM, AS All@WGM
11/24/2007 12:45 PM cc
Subject Screening Memo

Please review the attached screening memo.

Thank you.

Jared Bobrow
Weil, Gotshal & Manges LLP
Phone: 650-802-3034
Fax: 650-802-3100

E-mail: jared.bobrow@weil.com

WEIL, GOTSHAL & MANGES LLP
M E M O R A N D U M

November 20, 2007

TO: All Personnel (All Offices) cc: Ian Hamilton
FROM: Jared Bobrow
RE: Conflict of Interest Screening – ArthroCare Corporation/Olympus Corporation

WG&M represents Olympus Corporation (“Olympus”) in connection with its ~~potential acquisition of Gyrus Group Plc and Gyrus subsidiaries (66178.0004).~~ WG&M also represents ArthroCare Corporation (“ArthroCare”) in a suit for patent infringement against three Gyrus subsidiaries in the United States, namely, Gyrus Medical, Inc., Gyrus ENT, L.L.C., and Gyrus ACMI, Inc. (collectively “Gyrus”) (17550.0015).

To avoid any appearance of impropriety, and to fulfill our commitments to the clients involved, each timekeeper listed below who has provided, and all timekeepers who hereafter provide, services to ArthroCare in connection with the ArthroCare/Gyrus patent litigation must be screened from each timekeeper listed below who has provided, and all timekeepers who hereafter provide, services to Olympus in connection with the Gyrus acquisition. Specifically, any such timekeepers working on the ArthroCare/Gyrus patent litigation shall not (a) work on or have anything to do with Olympus’s acquisition of Gyrus; (b) discuss any aspect of the ArthroCare/Gyrus patent litigation with, or in the presence of, any WG&M attorneys or personnel working on Olympus’s acquisition of Gyrus; or (c) receive or review any documents, files or information concerning Olympus’s acquisition of Gyrus.

Similarly, each timekeeper listed below who has provided, and all timekeepers who hereafter provide, services to Olympus in connection with the Gyrus acquisition must be screened from each timekeeper listed below who has provided, and all timekeepers who hereafter provide, services to ArthroCare in connection with the ArthroCare/Gyrus patent litigation.

Specifically, any such timekeepers working on Olympus's acquisition of Gyrus shall not (a) work on or have anything to do with the ArthroCare/Gyrus patent litigation; (b) discuss any aspect of Olympus's acquisition of Gyrus with, or in the presence of, any WG&M attorneys or personnel working on the ArthroCare/Gyrus patent litigation; or (c) receive or review any documents, files or information concerning the ArthroCare/Gyrus patent litigation.

A list of WG&M timekeepers currently working on the respective matters is set forth below.

WG&M Timekeepers Currently
Working for ArthroCare on the Gyrus
patent litigation

Jared Bobrow
Nicholas Groombridge
Paula Whitten
Cabrach Connor
Margaret Masters

WG&M Timekeepers Currently
Working for Olympus on the Gyrus
acquisition

Michael Francies
Akiko Mikumo
Ian Hamilton
Debra Pearlstein
Lauren B Lipson
Alan Kusnitz
Eric S Hochstadt
Meg Brown
David G Adler
Arnaud Felix
Ritu Pancholy
Philip Barahona
Marie Carmant
Daniel McLaughlin
Cathy Dixon
Ann Malester
Steven Bernstein
Doug Nave
Andrew McLean
Barry Fishley
Alicia L Speake
Oliver Walker
Alexandra Ekpiken
Maxine House
Edward N Jackson
Peter van Keulen
Gail Marshall
Julia Harkness
Rachel Xuereb
Christopher Smith

Katherine Durkacz
Eleanore Varnham
Daniyal Stanton
Benedict Pearce

If anyone has any questions about the nature or extent of this screen, please
contact Jared Bobrow or Ian Hamilton.

Thank you.

EXHIBIT B

WEIL, GOTSHAL & MANGES LLP

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HONG KONG
HOUSTON
LONDON
MIAMI
MUNICH
NEW YORK
PARIS
PRAGUE
PROVIDENCE
SHANGHAI
SILICON VALLEY
SINGAPORE
WARSAW
WASHINGTON, D.C.
WILMINGTON

DIRECT LINE
650-802-3034
jared Bobrow

February 18, 2008

BY E-MAIL

Richard Rew
ArthroCare Corporation
7500 Rialto Boulevard
Building Two, Suite 100
Austin, TX 78735

Re: **ArthroCare v. Gyrus**

Dear Mr. Rew:

As we have previously discussed, since August 2007 Weil Gotshal has represented Olympus Corporation in connection with its acquisition of Gyrus Group PLC. The acquisition closed on February 1, 2008, and Gyrus Group PLC is now an indirect, wholly-owned subsidiary of Olympus Corporation. Although Weil Gotshal's representation of Olympus in connection with the Gyrus acquisition now is largely concluded, we anticipate that we will continue to represent Olympus with respect to any necessary follow up work on this transaction and in other matters.

The Olympus/Gyrus matter was staffed primarily with attorneys in our London office, with assistance from lawyers in New York and Washington on antitrust and other issues. There has been no overlap of personnel working on the Olympus/Gyrus transaction and those working on ArthroCare matters. Upon commencement of the patent infringement lawsuit against Gyrus on behalf of ArthroCare, Olympus retained separate counsel to perform any due diligence and provide advice it required with respect to the lawsuit and Weil Gotshal was not involved in those efforts.

During the course of the Olympus/Gyrus transaction, the Weil Gotshal Olympus team received access to Gyrus Group information that is protected by confidentiality agreements and which it may use solely for purposes of its work on that transaction. We have established screening procedures to ensure that none of this information is communicated to any members of

WEIL, GOTSHAL & MANGES LLP

February 18, 2008

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the ArthroCare litigation team. Specifically, we have instructed all personnel that all members of the ArthroCare/Gyrus patent litigation team must be screened from each member of the Olympus/Gyrus acquisition team, and shall not: (a) work on or have anything to do with Olympus's acquisition of Gyrus; (b) discuss any aspect of the ArthroCare/Gyrus patent litigation with, or in the presence of, any WG&M attorneys or personnel working on Olympus's acquisition of Gyrus; or (c) receive or review any documents, files or information concerning Olympus's acquisition of Gyrus. We likewise have instructed all personnel that all members of the Olympus/Gyrus acquisition team must be screened from all members of the ArthroCare/Gyrus patent litigation team and shall not: (a) work on or have anything to do with the ArthroCare/Gyrus patent litigation; (b) discuss any aspect of Olympus's acquisition of Gyrus with, or in the presence of, any WG&M attorneys or personnel working on the ArthroCare/Gyrus patent litigation; or (c) receive or review any documents, files or information concerning the ArthroCare/Gyrus patent litigation. We intend to keep these screening procedures in place permanently and will continue to comply with all confidentiality restrictions on the use of any Gyrus Group information.

We do not believe these circumstances present a conflict of interest and, in any event, have analyzed the situation and concluded that Weil Gotshal will be able to provide competent and diligent representation to ArthroCare in the patent infringement lawsuit against Gyrus. The Gyrus defendants disagree and, as you know, have moved to disqualify Weil Gotshal from representing ArthroCare in the patent infringement case.

The purpose of this letter is to memorialize the circumstances and confirm that ArthroCare has been advised of the information in this letter and consents to Weil Gotshal's continued representation of ArthroCare in the patent infringement lawsuit, as well as Weil Gotshal's continued representation of Olympus.

Please do not hesitate to contact me with any questions. Kindly countersign the letter and return it to me by fax or pdf.

Sincerely,

Jared Bobrow w/ permission by
Jared Bobrow

Kevin Kudlac
KEVIN KUDLAC

Acknowledged and agreed:

Richard Rew
Richard Rew